



Australian Government

Takeovers Panel

Reasons for Decision

Yowie Group Ltd 06 & Keybridge Capital Limited 19 [2025] ATP 23

Catchwords:

Decline to make a declaration – announced bid – bidder’s statement – disclosure – interim order

Corporations Act 2001 (Cth), sections 249F, 249G, 259C(1), 259C(2), 259E, 602, 631(1)(b), 652B, 657A, 707(3), 713, 713(6)

Corporate Law Economic Reform Program Bill 1998, Explanatory Memorandum

Australian Securities and Investments Commission Regulations, regulation 16(1)(j)

Yowie Group Ltd and Bolton v Keybridge Capital Ltd (No 3) [2025] NSWCA 168, In the matter of Yowie Group Ltd [2025] NSWSC 648

Yowie Group Ltd 04 & 05 [2025] ATP 22, Keybridge Capital Limited 20 [2025] ATP 20, Keybridge Capital Limited 17 [2025] ATP 15

Interim order	IO undertaking	Conduct	Declaration	Final order	Undertaking
YES	NO	YES	NO	NO	NO

INTRODUCTION

1. The Panel, Teresa Dyson (sitting President), Christopher Stavrianou and James Stewart¹, declined to make a declaration of unacceptable circumstances on two applications by Keybridge Capital Limited – one in relation to the affairs of Yowie Group Ltd and the other in relation to its own affairs. The applications, heard together, primarily concerned whether the terms of the Bid were designed to dilute Keybridge’s shareholding in Yowie ahead of the Yowie s249F meeting and disclosure issues in the bidder’s statement. Given the current commercial circumstances, including Yowie’s decision not to proceed with the Bid², the Panel considered that there was no reasonable prospect that it would declare the circumstances unacceptable.
2. In these reasons, the following definitions apply.

Bid	has the meaning given in paragraph 8
Bidder’s Statement	has the meaning given in paragraph 11
Keybridge	Keybridge Capital Limited
Minimum Acceptance Condition	has the meaning given in paragraph 12(a)

¹ There was no objection to the same sitting Panel as in *Yowie Group Ltd 04 & 05, Keybridge Capital Limited 17* and *Keybridge Capital Limited 20*

² Refer to Yowie’s ASX announcement dated 10 July 2025 titled “*Yowie Group Limited will not proceed with despatch of Offers and Bidder’s Statement*”

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No Control Condition	has the meaning given in paragraph 12(b)
Yowie	Yowie Group Ltd
Yowie s249F meeting	has the meaning given in paragraph 10

FACTS

3. Keybridge is an ASX-listed investment and financial services firm with a portfolio of listed and unlisted investments (ASX: KBC).
4. Yowie is an ASX-listed company that manufactures chocolate (ASX: YOW).
5. Keybridge holds a relevant interest in 58.07% of Yowie. Keybridge is indebted to Yowie.
6. The historical events between Keybridge and Yowie leading up to the Bid are set out in detail in the reasons for decision in *Keybridge Capital Limited 17*³ and *Keybridge Capital Limited 20*⁴, and *Yowie Group Ltd 04&05*⁵.
7. The directors of Keybridge are Messrs Geoffrey Wilson AO, Jesse Hamilton, Martyn McCathie, Sulieman Ravell and Antony Catalano.
8. On 9 May 2025, Yowie announced its intention to make a one for one scrip takeover bid for Keybridge (**Bid**) on conditions including that:
 - (a) Keybridge not take any actions that would influence the control or composition of the Yowie Board⁶ and
 - (b) “ASIC provides the Company an exemption under s259C(2) of the Corporations Act from the operation of section 259C(1) for the purposes of Yowie acquiring KBC Shares pursuant to the Offer”.⁷
9. On 16 May 2025, Keybridge made an announcement on ASX that shareholders should “take no action” in relation to the Bid.⁸ The announcement stated that Keybridge did not consider the Bid to be genuine, including because of “*the sheer number and breadth of the 35 defeating conditions to the ‘Bid’, many of which will be breached by Keybridge securing operational control of its subsidiary, Yowie*”.
10. On or about 26 May 2025, Keybridge called a s249F meeting to seek to replace the Yowie board (**Yowie s249F meeting**). The calling of the Yowie s249F meeting for 27

³ [2025] ATP 15

⁴ [2025] ATP 20

⁵ [2025] ATP 22

⁶ Including issuing a notice under sections 249D, 249F or 249G for the purpose of convening a meeting of Yowie shareholders or proposing a resolution of a meeting of Yowie shareholders

⁷ Refer to Yowie’s ASX announcement dated 9 May 2025 titled “*Yowie Group Limited announces scrip takeover bid for Keybridge Capital Limited (ASX: KBC)*”

⁸ Refer to Keybridge’s ASX announcement dated 16 May 2025 titled “*TAKE NO ACTION – “takeover bid” from Yowie Group*”

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June 2025 at 10:00am was announced on ASX on 5 June 2025.⁹ The notice of meeting was executed by Messrs Hamilton and Ravell.¹⁰

11. On 13 June 2025, Yowie lodged its bidder's statement in relation to the Bid with ASIC (**Bidder's Statement**). The Bid had a condition that:

"Prior to the end of the Offer Period, Yowie shareholders do not pass a resolution in general meeting (including any resolution set out in the general meeting of Yowie Shareholders purportedly called by Keybridge under section 249F of the Corporations Act in its notice of meeting dated 26 July 2025) the effect of which is to change the composition of the board of directors of Yowie."

12. The Bid did not include the condition to ASIC relief under s259C(2) (as stated in paragraph 8(b)) but included the following defeating conditions instead:

- (a) a 35% 'Minimum Acceptance Condition' (excluding any relevant interest by reason of Keybridge controlling Yowie) (**Minimum Acceptance Condition**) and
- (b) a 'No Control Condition' in these terms: *"By no later than the end of the Offer Period, Keybridge does not control (within the meaning of section 259E of the Corporations Act) Yowie"* (**No Control Condition**).

13. The Bid stated that:

"Neither the Minimum Acceptance Condition nor the No Control Condition may be waived by Yowie. Despite the previous sentence, Yowie may fulfil the No Control Condition by issuing Yowie Shares to those Keybridge Shareholders who have accepted the Offer if the effect of the issue is that Keybridge does not control (within the meaning of section 259E of the Corporations Act) Yowie immediately after the issue."

[. . .]

"The satisfaction or waiver of the Minimum Acceptance Condition and the No Control Condition are each a condition precedent to the formation of any contract arising from acceptance of an Offer. Yowie will not process acceptances while either Condition has not been fulfilled or waived. As a result, if you accept the Offer, you will be able to revoke your acceptance at any time while either Condition has not been fulfilled or waived. Neither such Condition can be waived at any time while Keybridge continues to control Yowie. However, the No Control Condition can be fulfilled by Yowie issuing Yowie Shares to those Keybridge Shareholders who have accepted the Offer if the effect of the issue would be that Keybridge no longer controls Yowie."

⁹ On 4 June 2025, Keybridge commenced proceedings in the Supreme Court of New South Wales, seeking a number of declarations in relation to the validity of the Yowie s 249F meeting.

¹⁰ On 20 June 2025, *In the matter of Yowie Group Ltd* [2025] NSWSC 648 at [82], Justice Black handed down his judgement, declaring (among other things) that *"the notice of general meeting issued by [Keybridge] and despatched to shareholders of [Yowie] under s249F of the Act is a valid notice convening a general meeting of shareholders of [Yowie] to be held on Friday 27 June 2025"*. Postscript - on 30 July 2025, the Full Court of the Supreme Court of New South Wales dismissed an appeal of Justice Black's decision, see *Yowie Group Ltd and Bolton v Keybridge Capital Ltd (No 3)* [2025] NSWCA 168.

APPLICATION

14. By applications dated 17 June 2025, Keybridge sought a declaration of unacceptable circumstances, submitting (among other things) that:
- (a) the No Control Condition is an attempt to circumvent the prohibition under s259C(1) by requiring that only a minimum of 35% acceptances by Keybridge shareholders are received by Yowie and sequencing the issue of consideration due to accepting Keybridge shareholders
 - (b) the Bid was made “*purely for a collateral purpose*” and is “*designed to dilute Keybridge’s shareholding in Yowie to below 50% ahead of the Yowie s249F meeting, for the purpose of entrenching the Yowie board of directors*”
 - (c) the acquisition of control of Keybridge is not taking place in an efficient, competitive and informed market, contrary to section 602 and
 - (d) there are other issues in relation to the Bid including the use of short form disclosure under s713 and other disclosure deficiencies in relation to the Bidder’s Statement including (among other things) the rationale or commercial reasoning behind the Bid and other financial information concerning Keybridge and Yowie.

Interim orders sought

15. Keybridge sought interim orders that until the earlier of further order of the Panel or the final determination of the Panel proceedings, Yowie:
- (a) be restrained from acquiring shares in Keybridge and/or
 - (b) not waive or amend any condition listed in the Bidder’s Statement.¹¹

Final orders sought

16. Keybridge sought final orders requiring Yowie to:
- (a) withdraw the Bid
 - (b) make an announcement to the market (in a form to which the Panel does not object) of the withdrawal of the Bid and
 - (c) pay Keybridge’s costs associated with the applications.

Out of process submission

17. Keybridge made an out of process submission (by email) dated 23 June 2025 which we agreed to receive.
18. In the out of process submission, Keybridge identified new circumstances and events that arose after the lodgement of the applications, which Keybridge perceived to be as relevant to the Panel’s consideration of the interim orders sought.
19. Keybridge submitted that on Wednesday, 18 June 2025:

¹¹ This was an additional interim order sought by Keybridge in its out of process submission dated 23 June 2025 (see paragraph 17)

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- (a) Messrs John Patton and Mr Nicholas Bolton resigned as directors of Yowie and that under clause 17.1 of Yowie’s constitution, the resignation automatically terminated Messrs Patton and Bolton’s executive roles and
 - (b) ASIC sent a letter to Keybridge asking for submissions on a possible determination from ASIC as to the availability of short form disclosure documents for Keybridge under s713(6).
20. Keybridge further submitted that on Friday, 20 June 2025, Justice Black delivered his reasons for judgement¹², including at paragraphs [77] and [78] as to Yowie’s improper purpose in making the takeover bid for Keybridge:

“[77] I also find that [Yowie’s] directors had a further and substantial improper purpose in postponing the Yowie s249F meeting which was not disclosed by that announcement. As I noted above, Yowie’s directors plainly knew that Yowie’s takeover bid for Keybridge was structured to seek to dilute Keybridge’s shareholding in Yowie, if Keybridge shareholders accepted that bid; Mr Ranger accepted that he knew the offer operated in that way in cross-examination; and I comfortably draw the inference that Yowie’s directors postponed the meeting as to allow additional time for any dilution to take place. To the extent that Mr Ranger did not accept that he held that purpose in cross-examination, I am not persuaded by his denial of that matter and I infer that no evidence that could have been led by the other directors or former directors of Yowie who did not give evidence, including Mr Patton and Mr Bolton, would have assisted Yowie in displacing that inference.”

“[78] I am comfortably satisfied that, even if Yowie’s directors acted partly for a proper purpose in postponing and relocating the Yowie s249G meeting, they would not have exercised the postponement power but for their impermissible purposes of allowing ASG’s attempt to remove Keybridge’s directors to succeed, allowing Keybridge’s control of Yowie to be diluted by Yowie’s takeover bid, so as to preserve their control of Yowie. In reaching this finding, I have not neglected that clause 15.16 of Yowie’s constitution deals with directors’ disclosure obligations, but it does not relevantly limit directors’ fiduciary and other duties, where they would be prohibited from voting by s195 of the Act. This finding is sufficient basis to declare the postponement and relocation of that meeting to be invalid and of no effect, and I make a declaration to that effect below.”

DISCUSSION

21. We have considered all the material but address specifically only that part of the material we consider necessary to explain our reasoning.

Interim Orders and decision to conduct proceedings

22. On 24 June 2025, we considered the request for interim orders on an urgent basis.
23. We considered the relevant factors for making an interim order.¹³ Having regard to (among other things), the imminent timing of the despatch of the bidder’s statement (scheduled for 27 June 2025) and our initial assessment of Keybridge’s submissions regarding the disclosure deficiencies identified in the Bidder’s Statement (see below),

¹² In the matter of Yowie Group Ltd [2025] NSWSC 648

¹³ See Guidance Note 4: Remedies at [12]

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we considered there was a risk that a non-compliant Bidder's Statement could be despatched.

24. Accordingly, we made interim orders restraining Yowie from:
- (a) taking any steps, and must ensure that no steps are taken by any person, to process any acceptances received in relation to the Bid or
 - (b) declaring the Bid to be unconditional (see Annexure A).
25. In our view, the applications raised concerns that warranted further enquiry, including in relation to the disclosure deficiencies in the Bidder's Statement and the collateral purpose of the Bid. Accordingly, we decided to conduct proceedings and hear the applications together¹⁴.

Deferral of proceedings

26. Before we consider each of Keybridge's submissions in turn, we summarise the timeline of the proceedings.
27. On Friday, 27 June 2025, the Yowie s249F meeting proceeded and resolutions to replace the former Yowie directors with Messrs Wilson, Hamilton, McCathie, Catalano and Ravell were passed.
28. On Monday, 30 June 2025, we invited parties to provide submissions on how the results of the Yowie s249F meeting would impact the continuation or conduct of the proceedings.
29. On 1 July 2025, Keybridge submitted, in response to an invitation to provide submissions in the Yowie Group Limited 04 & 05 proceedings¹⁵, among other things that:
- (a) the Panel should defer consideration of the Yowie Group Limited 04 & 05 proceedings
 - (b) it was not *"aware of what, if any, steps that Yowie's newly constituted board will be taking in connection with Yowie progressing its attempt to acquire its parent without ASIC relief from the Corporation's Act prohibitions"* and
 - (c) it would *"expect that this, among other matters, will be the subject of consideration by Yowie in the coming days, including in the context of requirements under s633"*.
30. Given the uncertainty around the status of the Bid and the application going forward, we directed that the proceedings be deferred until 9 July 2025¹⁶.

¹⁴ Under regulation 16 of the *Australian Securities and Investments Commissions Regulations 2001* (Cth)

¹⁵ *Yowie Group Limited 04 & 05* [2025] ATP 22

¹⁶ Pursuant to regulation 16(1)(j) of the *Australian Securities and Investments Commission Regulations*. We also deferred the Yowie Group 04 & 05 proceedings, see *Yowie Group Limited 04 & 05* [2025] ATP 22 at [38]

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31. On Thursday, 10 July 2025 at 10:33am (AEST), Yowie announced on the ASX that “it will not proceed with despatch of offers [in relation to the Bid] and the Bidder’s Statement”.¹⁷ In the announcement, Yowie noted that:
- “[F]ollowing the outcome of the extraordinary general meeting held on 27 June 2025, the “no change to Yowie Board composition” condition to the Bid has been triggered [and] after considering all aspects of the Bid and the Bidder’s Statement, it is not in Yowie’s interest to proceed with the Bid.*
- Accordingly, Yowie does not intend to proceed with the despatch of the Bidder’s Statement as to do so would be futile, including because the Bid would close with a defeating condition breached.”*
32. We sought further submissions¹⁸ from:
- (a) Keybridge in regard to their intentions in relation to the application, including whether Keybridge wished to withdraw the application and
 - (b) Yowie on whether it had, or had requested, ASIC’s consent to withdraw the Bid.
33. On Friday, 11 July 2025, the new board of Yowie¹⁹ submitted a replacement notice to become a party.
34. Yowie submitted (among other things) that it had not requested ASIC’s consent to withdraw²⁰ and notified ASIC via a letter dated Thursday, 10 July 2025 of its intention to announce to the ASX that it would not proceed with the despatch of offers and the Bidder’s Statement to Keybridge shareholders.
35. Yowie further submitted that it had received an email from ASIC in response to the letter referred to in paragraph 34 above in the following terms:
- “ASIC acknowledges the position outlined in Yowie’s letter and its announcement made at 10:33[am] today.*
- ASIC does not intend to object to the withdrawal of Yowie’s bid based on the information presently before us.*
- For the avoidance of doubt, this email is not a written consent from ASIC under s652B, and any future announcements by the company should not make representations suggesting ASIC has consented or otherwise approved the withdrawal of Yowie’s bid.”*

¹⁷ Refer to Yowie’s ASX announcement dated 10 July 2025 titled “Yowie Group Limited will not proceed with despatch of Offers and Bidder’s Statement”.

¹⁸ On Thursday, 10 July 2025 at 10:30am (AEST), we directed that the proceedings be further deferred until Monday, 14 July 2025 but we withdrew this deferral at 5:30pm (AEST) on the same day after Yowie’s announcement that it was not proceeding with the Bid.

¹⁹ Through its legal representative, Gilbert + Tobin

²⁰ Yowie submitted that “Section 652B of the Corporations Act provides that unaccepted offers under a takeover bid may be withdrawn with the written consent of ASIC. Given this provision specifically refers to ‘unaccepted offers’, Yowie considers that a bidder may only seek ASIC’s written consent to withdraw offers under section 652B once offers have been made to target shareholders. Yowie has not despatched the Offers and Bidder’s Statement to Keybridge shareholders pursuant to section 631(1)(b) of the Corporations Act. Accordingly, there are no “offers” Yowie could seek ASIC’s consent to withdraw.”

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36. Keybridge submitted (among other things) that:
- (a) *“now that the defective bid will not proceed, the final orders sought are no longer required”*
 - (b) *“the bid’s announcement on 9 May 2025 with the various defeating conditions seeking to restrain shareholder meetings and board changes, represented unacceptable circumstances”* and
 - (c) *“Yowie’s bidder’s statement seeking to open the offer on the morning of the Yowie s249F meeting also represented unacceptable circumstances, as each stage of the bid was designed purely to either prevent shareholders from holding any meetings entirely, and/or dilute Keybridge ahead of the Yowie s249F meeting”.*
37. Keybridge did not press for any orders other than a costs order.

Not in the public interest to continue proceedings

38. Following the new Yowie directors’ decision to not proceed with the Bid, the factual circumstances underpinning the application materially changed and the final orders originally sought, as submitted by Keybridge, are no longer relevant or have any currency.
39. We previously expressed our concerns on the Bid and Bidder’s Statement in *Keybridge Capital Limited 20*.²¹
40. However, we do not consider that it would serve any useful purpose to make a declaration in the absence of a live transaction. A declaration is directed to ensuring that the policy objectives of Chapter 6 are met in practice and that market participants can rely on fair and informed processes. Those objectives are not advanced by considering a bid that will not proceed.
41. Continuing with the proceedings would involve further time and resources being expended on issues that are now largely hypothetical. We are tasked to provide a commercial, timely and cost-effective forum for resolving takeover disputes.²² It is not keeping with that function to continue proceedings where the underlying transaction has been abandoned.
42. Keybridge submitted that the matter should nonetheless proceed in order for us to consider whether a costs order should be made against the former Yowie directors. We do not accept that this is a sufficient basis to continue. We are not constituted as a tribunal for the resolution of costs disputes, nor does the legislation envisage us as functioning as a forum solely for the determination of costs.
43. Furthermore, Panel costs orders are the exception and are generally reserved for circumstances where a party has acted unreasonably or has caused unnecessary delay or expense to others.²³ Without making any finding as to whether a party has acted unreasonably or caused unnecessary delay or expense, we have chosen not to

²¹ *Keybridge Capital Limited 20* [2025] ATP 20 at [57]

²² See Corporate Law Economic Reform Program Bill 1998, Explanatory Memorandum at 5, 6 and 38

²³ Guidance Note 4: Remedies General at [29]

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continue proceedings as to pursue a declaration solely as a vehicle to test a potential costs order would be inconsistent with our established approach.

44. We are satisfied that it is neither appropriate nor in the public interest to continue proceedings. We did not think it served any purpose to prolong inquiries that could not give rise to a meaningful order. Once the Bid was not proceeding, there was no longer any utility in pursuing any allegations or submissions tied to the Bid.

DECISION

45. For the reasons above, we declined to make a declaration of unacceptable circumstances. We consider that it is not against the public interest to decline to make a declaration²⁴ and we had regard to the matters in s657A(3).

Orders

46. Given that we made no declaration of unacceptable circumstances, we make no final orders, including as to costs.

Teresa Dyson
President of the sitting Panel
Decision dated 29 July 2025
Reasons given to parties 23 September 2025
Reasons published 25 September 2025

²⁴ We considered in the circumstances of these matters, that it was not in the public interest to make a declaration for the purposes of making a costs order

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Advisers

Party	Advisers
Keybridge	Mills Oakley (until 1 July 2025) Gadens (from 1 July 2025)
Yowie	MinterEllison (until 11 July 2025) Gilbert + Tobin (from 11 July 2025)



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Annexure A
CORPORATIONS ACT
SECTION 657E
INTERIM ORDERS

YOWIE GROUP LTD 06 AND KEYBRIDGE CAPITAL LIMITED 19

Keybridge made two applications to the Panel dated 17 June 2025 – one in relation to the affairs of Yowie and the other in relation to its own affairs.

The Panel ORDERS:

1. Without the consent of the Panel, Yowie must not:
 - (a) take any steps, and must ensure that no steps are taken by any person, to process any acceptances received in relation to the Yowie Offer or
 - (b) declare the Yowie Offer to be unconditional.
2. In these interim orders the following terms have their corresponding meaning:

Keybridge	Keybridge Capital Limited
Yowie	Yowie Group Ltd
Yowie Offer	Yowie's off-market takeover bid for Keybridge set out in its bidder's statement dated 13 June 2025.
3. These interim orders have effect until the earliest of:
 - (i) further order of the Panel
 - (ii) the determination of the proceedings and
 - (iii) 2 months from the date of these interim orders.

Tania Mattei
General Counsel
with authority of Teresa Dyson
President of the sitting Panel
Dated 25 June 2025